IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2633 OF 2003

Municipal Corporation of
the City of Pune .. Petitioner

Versus

Madhukar Gandhar .. Respondent

Mr.R.M.Pethe i/b. R.G.Ketkar for petitioner
Mr.A.P.Vanarase, A.G.P. for respondent

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th January 2006.

P.C.

. Heard Mr.Pethe, learned Counsel for petitioner and Mr.Vanarase for respondent. Rule.

Since, a short legal point arises for consideration and determination, petition can conveniently be disposed of finally at this stage itself. Hence, taken up for hearing forwith by consent.

2. Petitioner Pune Municipal Corporation is aggrieved by an order dated 21st June 2002 passed by 4th Additional Dist. Judge Pune in Civil Appeal No.603 of 2001 confirming judgement and order dated 20th June 2000 passed by the Additional Chief Judge, Small Causes Court, Pune in Municipal Appeal No.189 of 1993. Respondent is admittedly a owner of residential flat/apartment being Flat No.3, Gopika Narayaneshwar Apartment, 342 Narayan Peth, Pune 30 admeasuring 643 sft. carpet and located on first floor of the building. Petitioner corporation forwarded to respondent first tax bill pertaining to this flat on 5th October 1993. Ratable value assessed by the Corporation in

respect of the said flat is Rs.4000/-. Upon receipt of bill and the demand contained therein, respondent filed an appeal under section 406 of the Bombay Provincial Municipal Corporations Act 1949 to the authority designated as appellate authority viz., Judge Small Causes Court, Pune. That municipal appeal was instituted on 16th October 1993. The Corporation filed its reply to this municipal appeal and contended that the demand raised was in accordance with law, inasmuch as, Taxation Rules which are framed under the BPMC Act and as applicable to Pune Municipal Corporation, permits the Corporation to assess ratable value and make a demand on respondent. Written statement/ reply of Corporation is dated 8th August 1994. Thereafter, parties went to trial inasmuch as witnesses were examined.

3. Upon considering the materials produced and the legal contentions advanced, the learned

Additional Chief Judge, Small Causes Court Pune vide order dated 20th June 2000 as noted above, allowed the appeal preferred by the respondent and directed that the ratable value be fixed at Rs.3450/- with effect from 1st April 1993 and all assessment books be corrected in accordance with the directions. Necessarily, if any extra amount has been collected, then the said would have to be adjusted towards future liabilities is his final direction.

4. Municipal Corporation was aggrieved naturally by this order and direction and, therefore, preferred Civil Appeal No.603 of 2001 under section 411 of BPMC Act. The said appeal was also dismissed and that is how, the present writ petition under Article 227 of the Constitution of India has been filed by the petitioner Corporation.

5. Mr.Pethe, learned Counsel for petitioner

submits that the courts below have committed serious error of law apparent on the face of record inasmuch as mandate of taxation rules and more particularly Rule 7 has not been noticed at all. In his submission if the taxation rules as applicable to Pune city are perused, the said rules not only provide in the first part (Rule 7) about assessment of ratable value by taking into account the annual rent that might reasonably be expected from the premises in question, but by proviso thereto permit the Corporation to even compute annual rent at the rate pointed out therein. In other words, he submits that when premises such as building or portion thereof are occupied by owners exclusively for residential purpose, annual rent would have to be computed in terms of the proviso to Rule 7(1) and so computed it is permissible to assess ratable value in respect thereof in terms of first part of proviso and the owner does not get deprived of any other allowances permissible including those for

repairs. If this entire sub-rule had been noticed then the courts below would not have arrived at a conclusion that Corporation was in error in assessing ratable value in the manner it has done in the instant case and raising demand in pursuance thereof. For all these reasons, he submits that orders are vitiated and deserves to be quashed and set aside.

6. Mr.Vanarase, appearing for respondent owner on the other hand contends that the courts below have committed no error in coming to a conclusion that the computation of corporation in respect of premises in question was erroneous and that all allowances if permitted, the correct figure would be Rs.3450/-. In other words he submits that it is not a matter where the basis of assessment made by the trial court and lower appellate court is in any way erroneous but what is sought to be raised is an issue of computation and such issue being essentially on facts the

orders are not liable to be interfered with by this Court under Article 227 of the Constitution of India. For all these reasons, he submits that petition be dismissed.

7. For appreciating rival contentions, it would be necessary to note firstly the admitted facts. It is not in dispute that respondent is the exclusive owner of residential premises in question. It is further not in dispute that the premises are used exclusively by him for residential purpose. If that be the factual position, then the mandate of rules and more particularly Rule 7 will have to be followed. This Rule after amendment reads thus:-

> "7(1): In order to fix the rateable value of any building or land assessable to property tax, there shall deducted from the amount of the annual rent for which such land or building might

reasonably be expected to let from year to year, a sum equal to fifteen per cent of the said annual rent, and the said deduction shall be in lieu of all allowances for repairs or on any other account whatsoever.

" Provided that, in the case of any building or portion of a builting occupied by the owner exclusively for a residential purpose, the annual rent of such building or portion thereof shall, subject to the provisions of Rule 15, be deemed to be sixty per cent of the amount of the annual rent for which such building or portion of the building might reasonably be expected to let from year to year.".

8. Bare perusal on rule 7(1) of BPMC City of Pune Taxation (Amendment) Rules, 1969 would

indicate that in order to fix ratable value of any building or land, assessable to property tax, there shall be deducted from the amount of annual rent for which such land or building might reasonably be expected to be let from year to year, a sum equal to 15% of the said annual rent. This deduction will be in lieu of all allowances or repairs or other acount whatsoever. Proviso thereto contemplates that in case of a building or portion occupied by owners exclusively for residential purpose, the Corporation would have to compute annual rent which is expected to be yielded from this property year to year. Therefore, while empowering the Corporation to collect, upon levy and assessment, property tax and for that purpose determining ratable value by first part of sub-rule (1) of Rule 7, Vide the proviso, the Corporation is further empowered in cases of residential property exclusively occupied by owners, to compute annual rent by fixing at 60% of the amount which it is expected

to yield annually. Therefore, it is 60% of the amount of annual rent expected to be yielded which would constitute the annual rent for the purpose of first part of sub-rule 1 of Rule 7 and ratable value will have to be fixed on that basis and further steps taken thereafter. Once, it is not disputed that this rule is inforce and that the property is a portion of a building exclusively occupied by respondent as a owner for residential purpose, then computation done by Corporation in respect of annual rent was not liable to be interfered with in appeal by the trial court. Once, it is not disputed that the computation of the Corporation was in terms of proviso and the ratable value was fixed in terms as per first part of rule 7 (1), then, there was no occasion for the trial court as well as lower appellate court to have directed corporation to refix the Ratable value. The Corporation has been directed by the trial court as well as lower appellate court to give allowances to the

respondents for repairs not after the annual rent is determined in accordance with proviso but on the basis that the annual rent would be 55% of the subject property after allowance for repairs etc. In terms of proviso annual rent would be deemed to be 60% of the expected annual rent and only on that the allowance contemplated by first portion of sub-rule (1) of rule 7 can be granted. That percentage/ figure could not have been altered in any manner. That having been done, orders of courts below are in contravention of the proviso to the above rule and, therefore, are also not in consonance with the Rule in its entirety.

9. In the light of above, conclusion of courts below that the determination of ratable value for purpose of assessment of property tax by Corporation is erroneous, cannot be sustained. It is a conclusion vitiated by an apparent error of law. Rule including its proviso has to be

given its plain meaning and should have been applied with full force and rigour. Not applying so would be a clear misdirection in law and this is a fit case, therefore, for interference by this Court under Article 227 of the Constitution of India.

10. In the result, writ petition succeeds. Rule is made absolute to the extent that the orders passed by the lower appellate court and the trial court interfering with the fixing of ratable value, shall stand quashed and set aside. Since, the order is held to be erroneous in law, computation directed by courts below also stands set aside. Petitioners would be at liberty to take such steps as are permissible in law and levy, assess and recover property tax in accordance therewith. No orders as to costs.

(S.C.DHARMADHIKARI, J)